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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 26, 2017
MAHS Docket No.: 17-002059
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Eric J. Feldman

HEARING DECISION

Following Petitioner’s request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and 45 CFR 205.10. After due notice, a telephone hearing was held on [REDACTED], from Detroit, Michigan. The Petitioner was represented by his mother/Authorized Hearing Representative (AHR), [REDACTED]; and Petitioner, [REDACTED], also appeared for the hearing. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearings Facilitator. Also [REDACTED], Eligibility Specialist, was present for the hearing, but did not provide any testimony.

During the hearing, Petitioner/AHR waived the time period for the issuance of this decision in order to allow for the submission of additional records. On [REDACTED], notes from [REDACTED] and other documents were received and marked into evidence as Exhibit 1, pp. 1-61. On [REDACTED], a letter from [REDACTED] was received and marked into evidence as Exhibit 2, pp. 1-4. The record closed on or about [REDACTED], and the matter is now before the undersigned for a final determination based on the evidence presented.

ISSUE

Did the Department properly determine that Petitioner was not disabled for purposes of the State Disability Assistance (SDA) benefit program?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED], Petitioner submitted an application seeking cash assistance on the basis of a disability.

2. On [REDACTED], the Disability Determination Service (DDS)/Medical Review Team (MRT) found Petitioner not disabled for purposes of the SDA program. Exhibit A, pp. 13-19.
3. On [REDACTED], the Department sent Petitioner a Notice of Case Action denying the application effective [REDACTED], based on DDS/MRT's finding of no disability. Exhibit A, pp. 5-8.
4. On [REDACTED], the Department received Petitioner's timely written request for hearing. Exhibit A, pp. 2-4.
5. Petitioner alleged disabling impairments due chronic fatigue syndrome (CFS), type 1 diabetes (T1D), hyperacusis, chronic fatigue, tendonitis, and depression.
6. On the date of the hearing, Petitioner was [REDACTED] years old with a date of birth of [REDACTED]; he was [REDACTED]" in height and weighed [REDACTED] pounds.
7. Petitioner has a bachelor's degree.
8. At the time of application, Petitioner was not employed.
9. Petitioner has an employment history of work as web designer, junior marketing executive, researcher, vendor liaison, computer consultant, and food worker.
10. Petitioner has a pending appeal for a disability claim with the Social Security Administration.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), and Department of Health and Human Services Reference Tables Manual (RFT).

The State Disability Assistance (SDA) program, which provides financial assistance for disabled persons, was established by 2004 PA 344. The Department administers the SDA program pursuant to 42 CFR 435, MCL 400.10 *et seq.* and Mich Admin Code, Rules 400.3151 – 400.3180.

Petitioner applied for cash assistance alleging a disability. A disabled person is eligible for SDA. BEM 261 (July 2015), p. 1. An individual automatically qualifies as disabled for purposes of the SDA program if the individual receives Supplemental Security Income (SSI) or Medical Assistance (MA-P) benefits based on disability or blindness. BEM 261, p. 2. Otherwise, to be considered disabled for SDA purposes, a person must have a physical or mental impairment for at least ninety days which meets federal SSI disability standards, meaning the person is unable to do any substantial gainful activity

by reason of any medically determinable physical or mental impairment. BEM 261, pp. 1-2; 20 CFR 416.901; 20 CFR 416.905(a).

Determining whether an individual is disabled for SSI purposes requires the application of a five step evaluation of whether the individual (1) is engaged in substantial gainful activity (SGA); (2) has an impairment that is severe; (3) has an impairment and duration that meet or equal a listed impairment in Appendix 1 Subpart P of 20 CFR 404; (4) has the residual functional capacity to perform past relevant work; and (5) has the residual functional capacity and vocational factors (based on age, education and work experience) to adjust to other work. 20 CFR 416.920(a)(1) and (4); 20 CFR 416.945. If an individual is found disabled, or not disabled, at any step in this process, a determination or decision is made with no need to evaluate subsequent steps. 20 CFR 416.920(a)(4). If a determination cannot be made that an individual is disabled, or not disabled, at a particular step, the next step is required. 20 CFR 416.920(a)(4).

In general, the individual has the responsibility to establish a disability through the use of competent medical evidence from qualified medical sources such as his or her medical history, clinical/laboratory findings, diagnosis/prescribed treatment, prognosis for recovery and/or medical assessment of ability to do work-related activities or, if a mental disability is alleged, to reason and make appropriate mental adjustments. 20 CFR 416.912(a); 20 CFR 416.913. An individual's subjective pain complaints are not, in and of themselves, sufficient to establish disability. 20 CFR 416.908; 20 CFR 416.929(a). Similarly, conclusory statements by a physician or mental health professional that an individual is disabled or blind, absent supporting medical evidence, are insufficient to establish disability. 20 CFR 416.927(d).

Step One

The first step in determining whether an individual is disabled requires consideration of the individual's current work activity. 20 CFR 416.920(a)(4)(i). If an individual is working and the work is SGA, then the individual must be considered not disabled, regardless of medical condition, age, education, or work experience. 20 CFR 416.920(b); 20 CFR 416.971. SGA means work that involves doing significant and productive physical or mental duties and that is done, or intended to be done, for pay or profit. 20 CFR 416.972.

In this case, Petitioner was not working during the period for which assistance might be available. Because Petitioner was not engaged in SGA, he is not ineligible under Step 1; and the analysis continues to Step 2.

Step Two

Under Step 2, the severity and duration of an individual's alleged impairment is considered. If the individual does not have a severe medically determinable physical or mental impairment (or a combination of impairments) that meets the duration requirement, the individual is not disabled. 20 CFR 416.920(a)(4)(ii). The duration

requirement for SDA means that the impairment is expected to result in death or has lasted, or is expected to last, for a continuous period of at least 90 days. 20 CFR 416.922; BEM 261, p. 2.

An impairment, or combination of impairments, is severe if it significantly limits an individual's physical or mental ability to do basic work activities. 20 CFR 416.920(a)(4)(ii); 20 CFR 416.920(c). Basic work activities mean the abilities and aptitudes necessary to do most jobs, such as (i) physical functions such as walking, standing, sitting, lifting, pushing, pulling, reaching, carrying, or handling; (ii) the capacity to see, hear, and speak; (iii) the ability to understand, carry out, and remember simple instructions; (iv) use of judgment; (v) responding appropriately to supervision, co-workers and usual work situations; and (vi) dealing with changes in a routine work setting. 20 CFR 416.921(b). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. Social Security Ruling (SSR) 85-28.

The individual bears the burden to present sufficient objective medical evidence to substantiate the alleged disabling impairments. While the Step 2 severity requirement may be employed as an administrative convenience to screen out claims that are totally groundless solely from a medical standpoint, under the de minimis standard applied at Step 2, an impairment is severe unless it is only a slight abnormality that minimally affects work ability regardless of age, education and experience. *Higgs v Bowen*, 880 F2d 860, 862-863 (CA 6, 1988), citing *Farris v Sec of Health and Human Services*, 773 F2d 85, 90 n.1 (CA 6, 1985). A claim may be denied at Step 2 only if the evidence shows that the individual's impairments, when considered in combination, are not medically severe, i.e., do not have more than a minimal effect on the person's physical or mental ability to perform basic work activities. SSR 85-28. If such a finding is not clearly established by medical evidence or if the effect of an impairment or combination of impairments on the individual's ability to do basic work activities cannot be clearly determined, adjudication must continue through the sequential evaluation process. *Id.*; SSR 96-3p.

In the present case, Petitioner alleges disabling impairments due CFS, T1D, hyperacusis, chronic fatigue, tendonitis, and depression. The medical evidence presented at the hearing was reviewed and is summarized below:

On [REDACTED], Petitioner had a review visit, in which the doctor's initial impression was severe sore throat with life-altering fatigue. Exhibit A, pp. 284-285 and 287-289 (Health History report dated [REDACTED]). The doctor noted the medical decision making included an endobronchial mass, an acute histoplasmosis, and group streptococcus pharyngitis. Exhibit A, p. 285. The doctor noted he reviewed the computed tomography (CT) scan of Petitioner's chest and indicated there are irregular calcifications in the pericranial region, extending into the inferior hilum; there is an associated 1.3 x 1.3 cm nodule in the right middle lobe with irregular margins; this needs to be evaluated by endoscopy; and the monitor shows isolated periods of

supraventricular tachycardia, isolated periods of T flattening, but no ischemic T waves; and there is mild T wave inversion rarely. Exhibit A, pp. 285-286.

On [REDACTED], Petitioner was admitted to the [REDACTED] Recovery Center after an intervention that was instigated by his parents. Exhibit A, pp. 212-216. On [REDACTED], Petitioner was discharged with the following diagnoses by the doctor: opiate use disorder, moderate; humane herpesvirus 5; and type one insulin-dependent diabetes, newly diagnosed. Exhibit A, pp. 212-216. Petitioner was discharged with several medications and the doctor indicated his prognosis was guarded, as he was a newly diagnosed diabetic; there was some resistance to his compliance to the program here; however, Petitioner had some insight into his diabetes in researching that. Exhibit A, pp. 215-216.

On [REDACTED], Petitioner had an office visit, in which the doctor assessed him with tinnitus, bilateral and the tinnitus with hyperacusis since [REDACTED] triggered by an episode of prolonged exposure to loud noise, likely benign central phenomenon of as of yet known etiology. Exhibit 1, pp. 1-2.

There were progress notes dated from [REDACTED], to [REDACTED], in which the doctor diagnosed Petitioner with CFS with history of chronic active Epstein-Barr virus (EVD) and human herpesvirus 6 (HHV-6) (possibly); severe hyperacusis and tinnitus; history of abrupt onset type 1 diabetes; lobe natural killer cell function; IgG subclass deficiency; low iodine; history of mild thyroiditis; possible mild adrenal fatigue; and other multiple diagnoses. Exhibit 1, pp. 3-10.

On [REDACTED], Petitioner had a psychological consultative exam, in which the psychologist diagnosed him dysthymic disorder and his prognosis is guarded. Exhibit A, pp. 194-197. The licensed psychologist noted that Petitioner has a long list of illnesses causing him to be lethargic, apathetic, fatigued, and lacks motivation. Exhibit A, p. 196. The psychologist noted Petitioner is not receiving any psychiatric intervention anymore and it would be helpful for him to receive such treatment to better manage with psychiatric treatment as opposed to medical treatment. Exhibit A, p. 196. The licensed psychologist noted due to Petitioner's inability to function, combined with history of chemical dependency, it would be advised that someone else manage his finances; however, there does not seem to be any severe symptoms such as psychosis, thought disorder or cognitive dysfunction; however, he does seem depressed, apathetic and lethargic. Exhibit A, p. 196.

On [REDACTED], Petitioner had an internal medicine consultative examination. Exhibit A, pp. 200-202. The doctor's impression of Petitioner was CFS and history of positive mononucleosis and human herpesvirus-5 positive blood test; tinnitus secondary to antiviral treatment; severe CFS, weakness and sleepiness; and depression. Exhibit A, p. 202. The doctor noted Petitioner's fine and gross dexterity are intact, dominant hand is right; there is slight limitation of lifting, standing, sitting or walking more than 10-20 minutes due to fatigue and weakness; and he also needs to be evaluated by a psychologist or psychiatrist. Exhibit A, p. 202. A neurologic and orthopedic

supplemental report was provided showing he is able to conduct all current abilities and his range of motion is normal. Exhibit A, pp. 203-207.

On [REDACTED], Petitioner's doctor wrote a letter in which he stated the following: (i) he is being treated for CFS with a history of chronic active viral infection including EBV and possibly HHV-6; (ii) he "has a severe case of hyperacusis possibly secondary to an antiviral medication given to him by a previous physician", which means that he cannot tolerate noise not even at normal level speaking without headphones... "[f]ortunately with therapy this is slowly improving"; (iii) he has "developed insulin-dependent diabetes possibly secondary to an antiviral medication given to him a by a previous physician and developed rather severe pancreatic dysfunction"... "[f]ortunately that now appears to be improving slowly"; and (iv) currently, it is the doctor's opinion that "this patient is disabled from any meaningful employment for the next 12 -- 24 months and possibly longer." Exhibit 2, pp. 2-3, (quoted text from the doctor's letter).

On [REDACTED], Petitioner's doctor wrote a letter indicating that it is his opinion that Petitioner cannot work. Exhibit 2, p. 4.

In consideration of the *de minimis* standard necessary to establish a severe impairment under Step 2, the foregoing medical evidence is sufficient to establish that Petitioner suffers from severe impairments that have lasted or are expected to last for a continuous period of not less than 90 days. Therefore, Petitioner has satisfied the requirements under Step 2, and the analysis will proceed to Step 3.

Step Three

Step 3 of the sequential analysis of a disability claim requires a determination if the individual's impairment, or combination of impairments, is listed in Appendix 1 of Subpart P of 20 CFR, Part 404. 20 CFR 416.920(a)(4)(iii). If an individual's impairment, or combination of impairments, is of a severity to meet or medically equal the criteria of a listing and meets the duration requirement (20 CFR 416.909), the individual is disabled. If not, the analysis proceeds to the next step.

Based on the medical evidence presented in this case, listings 2.07 (disturbance of labyrinthine-vestibular function), 9.00 (endocrine disorders-adult), 12.04 (depressive, bipolar and related disorders), and 14.09 (inflammatory arthritis) were considered. The medical evidence presented does **not** show that Petitioner's impairments meet or equal the required level of severity of any of the listings in Appendix 1 to be considered as disabling without further consideration. Therefore, Petitioner is not disabled under Step 3; and the analysis continues to Step 4.

Residual Functional Capacity

If an individual's impairment does not meet or equal a listed impairment under Step 3, before proceeding to Steps 4 and 5, the individual's residual functional capacity (RFC) is assessed. 20 CFR 416.920(a)(4); 20 CFR 416.945. RFC is the most an individual

can do, based on all relevant evidence, despite the limitations from the impairment(s), including those that are not severe, and takes into consideration an individual's ability to meet the physical, mental, sensory and other requirements of work. 20 CFR 416.945(a)(1), (4); 20 CFR 416.945(e).

RFC is assessed based on all relevant medical and other evidence such as statements provided by medical sources, whether or not they are addressed on formal medical examinations, and descriptions and observations of the limitations from impairment(s) provided by the individual or other persons. 20 CFR 416.945(a)(3). This includes consideration of (1) the location/duration/frequency/intensity of an applicant's pain; (2) the type/dosage/effectiveness/side effects of any medication the applicant takes to relieve pain; (3) any treatment other than pain medication that the applicant has received to relieve pain; and (4) the effect of the applicant's pain on his or her ability to do basic work activities. 20 CFR 416.929(c)(3). The applicant's pain must be assessed to determine the extent of his or her functional limitation(s) in light of the objective medical evidence presented. 20 CFR 416.929(c)(2).

Limitations can be exertional, nonexertional, or a combination of both. 20 CFR 416.969a. If individual's impairments and related symptoms, such as pain, affect only the ability to meet the strength demands of jobs (i.e., sitting, standing, walking, lifting, carrying, pushing, and pulling), the individual is considered to have only exertional limitations. 20 CFR 416.969a(b).

The exertional requirements, or physical demands, of work in the national economy are classified as sedentary, light, medium, heavy, and very heavy. 20 CFR 416.967; 20 CFR 416.969a(a). Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools and occasionally walking and standing. 20 CFR 416.967(a). Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds; even though the weight lifted may be very little, a job is in the light category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. 20 CFR 416.967(b). Medium work involves lifting no more than 50 pounds at a time with frequent lifting or carrying of objects weighing up to 25 pounds. 20 CFR 416.967(c). Heavy work involves lifting no more than 100 pounds at a time with frequent lifting or carrying of objects weighing up to 50 pounds. 20 CFR 416.967(d). Very heavy work involves lifting objects weighing more than 100 pounds at a time with frequent lifting or carrying of objects weighing 50 pounds or more. 20 CFR 416.967(e).

If an individual has limitations or restrictions that affect the ability to meet demands of jobs **other than** strength, or exertional, demands, the individual is considered to have only nonexertional limitations or restrictions. 20 CFR 416.969a(a) and (c). Examples of non-exertional limitations or restrictions include difficulty functioning due to nervousness, anxiousness, or depression; difficulty maintaining attention or concentration; difficulty understanding or remembering detailed instructions; difficulty in seeing or hearing; difficulty tolerating some physical feature(s) of certain work settings

(i.e., unable to tolerate dust or fumes); or difficulty performing the manipulative or postural functions of some work such as reaching, handling, stooping, climbing, crawling, or crouching. 20 CFR 416.969a(c)(1)(i) – (vi). For mental disorders, functional limitation(s) is assessed based upon the extent to which the impairment(s) interferes with an individual's ability to function independently, appropriately, effectively, and on a sustained basis. *Id.*; 20 CFR 416.920a(c)(2). Chronic mental disorders, structured settings, medication, and other treatment and the effect on the overall degree of functionality are considered. 20 CFR 416.920a(c)(1). In addition, four broad functional areas (activities of daily living; social functioning; concentration, persistence or pace; and episodes of decompensation) are considered when determining an individual's degree of mental functional limitation. 20 CFR 416.920a(c)(3). The degree of limitation for the first three functional areas is rated by a five point scale: none, mild, moderate, marked, and extreme. 20 CFR 416.920a(c)(4). A four point scale (none, one or two, three, four or more) is used to rate the degree of limitation in the fourth functional area. *Id.* The last point on each scale represents a degree of limitation that is incompatible with the ability to do any gainful activity. *Id.*

In this case, Petitioner alleges both exertional and nonexertional limitations due to his medical condition. Petitioner alleges disabling impairments due to CFS, T1D, hyperacusis, chronic fatigue, tendonitis, and depression. In [REDACTED], Petitioner/AHR indicated he was diagnosed with CFS, which started as a sore throat for several years. He stated he has unrelenting fatigue, and he is almost in bed all day due to the CFS. His CFS is his primary disabling impairment; however, he also suffers from additional exertional and nonexertional limitations, such as hyperacusis, chronic fatigue, and depression.

He stated that he lays down and watches television all day. He stated that he does live with two roommates. He stated he can dress/undress, bathe/shower, but not often; and he can eat by himself. He stated he cannot do chores; his mother does his grocery shopping, but sometimes goes with someone else. He can lift a gallon of milk, but he cannot squat. He stated he can stand for less than five minutes, he can sit for less than 5 minutes; and he can walk a half a block to a block. He states that he also suffers from depression. He stated he has poor memory; sometimes he has crying spells; and he has little patience, which leads to anger issues. He stated he has no social interaction and has lost all of his friends.

A two-step process is applied in evaluating an individual's symptoms: (1) whether the individual has a medically determinable impairment that could reasonably be expected to produce the individual's alleged symptoms and (2) whether the individual's statement about the intensity, persistence and limiting effects of symptoms are consistent with the objective medical evidence and other evidence on the record from the individual, medical sources and nonmedical sources. SSR 16-3p.

In a progress note dated [REDACTED], Petitioner's doctor assessed him with CFS with history of EVD and HHV-6; insulin-dependent diabetes; and other diagnoses. Exhibit 1, p. 6. On [REDACTED], Petitioner also had an internal medicine consultative examination, in which the doctor assessed Petitioner with CFS and history

of positive mononucleosis and human herpesvirus-5 positive blood test; and severe CFS, weakness and sleepiness. Exhibit A, p. 202. This evidence was sufficient to support Petitioner's allegations of CFS/chronic fatigue and T1D.

In an office visit dated [REDACTED], the doctor assessed Petitioner with tinnitus, bilateral and the tinnitus with hyperacusis since [REDACTED] triggered by an episode of prolonged exposure to loud noise, likely benign central phenomenon of as of yet known etiology. Exhibit 1, pp. 1-2. In a progress note dated [REDACTED], Petitioner's doctor also assessed him with hyperacusis, probably secondary to cidofavir; and other diagnoses. Exhibit 1, p. 6. On [REDACTED], Petitioner had a psychological consultative exam, in which the psychologist diagnosed him dysthymic disorder. Exhibit A, pp. 194-197. This evidence was sufficient to support Petitioner's allegations of hyperacusis/tinnitus and depression.

With respect to the intensity, persistence and limiting effects of his symptoms, the medical evidence included office visits/progress notes, a consultative exam, his doctor's letter/medical opinion, and other medical evidence showing how Petitioner maintains the physical capacity to perform sedentary work as defined by 20 CFR 416.967(a). On [REDACTED], Petitioner had a review visit, in which the doctor's initial impression was severe sore throat with life-altering fatigue. Exhibit A, pp. 284-285 and 287-289 (Health History report dated [REDACTED]). It was later discovered in [REDACTED] that Petitioner was diagnosed with CFS. Petitioner's testimony alleges his CFS is his primary disabling impairment. In progress notes dated from [REDACTED], to [REDACTED], the doctor diagnosed Petitioner with CFS with history of chronic active EVD and HHV-6 (possibly); and other diagnoses. Exhibit 1, pp. 3-10. On [REDACTED], Petitioner even had an independent consultative exam, in which the doctor agreed with the Petitioner's doctor's findings and referred to his chronic fatigue as "severe." Exhibit A, pp. 200-202. The doctor's impression of Petitioner was CFS and history of positive mononucleosis and human herpesvirus-5 positive blood test; severe CFS, weakness and sleepiness; and other diagnoses. Exhibit A, p. 202. The doctor noted there is slight limitation of lifting, standing, sitting or walking more than 10-20 minutes due to fatigue and weakness. Exhibit A, p. 202. This statement by the doctor of his limitations of doing no more than 10-20 minutes of lifting, standing, etc...due to fatigue and weakness, limits him to sedentary work.

Additionally, Petitioner's doctor wrote a letter on [REDACTED], in which he indicated Petitioner is being treated for CFS with a history of chronic active viral infection including EBV and possibly HHV-6; he has "developed insulin-dependent diabetes possibly secondary to an antiviral medication given to him a by a previous physician and developed rather severe pancreatic dysfunction"... "[f]ortunately that now appears to be improving slowly"; and currently, it is the doctor's opinion that "this patient is disabled from any meaningful employment for the next 12 - 24 months and possibly longer." Exhibit 2, pp. 2-3, (quoted text from the doctor's letter). The undersigned finds his doctor's medical opinion persuasive because both the progress notes and the consultative exam, support the doctor's medical opinion that the CFS and his other diagnoses, effective his ability to obtain meaningful employment for the near future.

Even though the doctor indicated some of his diagnoses appears to be improving slowly, Petitioner's chronic CFS is still present, which places limitations or restrictions on his ability to perform work.

Based on totality of the hearing record, including the consultation exam and his doctor's progress notes/medical opinion, the evidence was sufficient to establish that Petitioner maintains the physical capacity to sedentary work as defined by 20 CFR 416.967(a).

With respect to Petitioner's nonexertional limitations, his diagnoses of hyperacusis/tinnitus and depression effects his ability to meet demands of jobs. In progress notes dated from [REDACTED], to [REDACTED], Petitioner's doctor diagnosed him with severe hyperacusis and tinnitus. Exhibit 1, pp. 3-10. On [REDACTED] Petitioner's doctor wrote a letter in which he stated Petitioner "has a severe case of hyperacusis possibly secondary to an antiviral medication given to him by a previous physician", which means that he cannot tolerate noise not even at normal level speaking without headphones..."[f]ortunately with therapy this is slowly improving." Exhibit 2, pp. 2-3 (quoted text from the doctor's letter). In fact, on [REDACTED], the doctor from the consultative exam acknowledged that Petitioner has tinnitus secondary to antiviral treatment. See Exhibit A, p. 202. Petitioner was further diagnosed with depression by both doctors from the psychological consultative exam and the internal medicine consultation examination. See Exhibit A, pp. 196 and 203-207. In regards to his psychological consultative exam, the psychologist diagnosed him dysthymic disorder and his prognosis is guarded. Exhibit A, pp. 194-197. Overall, the medical evidence supports Petitioner's testimony that he suffers from depression and that his diagnoses of hyperacusis/tinnitus places limitations or restrictions on his ability to perform work due to his hearing issues.

Based on the medical record presented, as well as Petitioner's testimony, Petitioner has moderate limitations to his activities of daily living; moderate limitations to his social functioning; and moderate limitations to his concentration, persistence or pace. Accordingly, the undersigned ALJ finds moderate limitations in Petitioner's mental capacity.

Petitioner's RFC is considered at both Steps 4 and 5. 20 CFR 416.920(a)(4), (f) and (g).

Step Four

Step 4 in analyzing a disability claim requires an assessment of Petitioner's RFC and past relevant employment. 20 CFR 416.920(a)(4)(iv). Past relevant work is work that has been performed within the past 15 years that was SGA and that lasted long enough for the individual to learn the position. 20 CFR 416.960(b)(1). An individual who has the RFC to meet the physical and mental demands of work done in the past is not disabled. *Id.*; 20 CFR 416.960(b)(3); 20 CFR 416.920. Vocational factors of age, education, and work experience, and whether the past relevant employment exists in significant numbers in the national economy are **not** considered. 20 CFR 416.960(b)(3).

Petitioner's work history in the 15 years prior to the application consists of work as a web designer, junior marketing executive, researcher, vendor liaison, computer consultant, and food worker.

Based on the RFC analysis above, Petitioner is limited to no more than sedentary work activities and has moderate limitations in his mental capacity to perform basic work activities. In light of the entire record and Petitioner's RFC, including his mental limitations, it is found that Petitioner is unable to perform past relevant work. Accordingly, Petitioner cannot be found disabled, or not disabled, at Step 4 and the assessment continues to Step 5.

Step 5

If an individual is incapable of performing past relevant work, Step 5 requires an assessment of the individual's RFC and age, education, and work experience to determine whether an adjustment to other work can be made. 20 CFR 416.920(a)(4)(v); 20 CFR 416.920(c). If the individual can adjust to other work, then there is no disability; if the individual cannot adjust to other work, then there is a disability. 20 CFR 416.920(a)(4)(v).

At this point in the analysis, the burden shifts from Petitioner to the Department to present proof that Petitioner has the RFC to obtain and maintain substantial gainful employment. 20 CFR 416.960(c)(2); *Richardson v Sec of Health and Human Services*, 735 F2d 962, 964 (CA 6, 1984). While a vocational expert is not required, a finding supported by substantial evidence that the individual has the vocational qualifications to perform specific jobs is needed to meet the burden. *O'Banner v Sec of Health and Human Services*, 587 F2d 321, 323 (CA 6, 1978).

When the impairment(s) and related symptoms, such as pain, only affect the ability to perform the exertional aspects of work-related activities, Medical-Vocational guidelines found at 20 CFR Subpart P, Appendix 2, may be used to satisfy the burden of proving that the individual can perform specific jobs in the national economy. *Heckler v Campbell*, 461 US 458, 467 (1983); *Kirk v Secretary*, 667 F2d 524, 529 (CA 6, 1981) *cert den* 461 US 957 (1983). However, if the impairment(s) and related symptoms, such as pain, only affect the ability to perform the non-exertional aspects of work-related activities, the rules in Appendix 2 do not direct factual conclusions of disabled or not disabled. 20 CFR 416.969a(c)(2). When a person has a combination of exertional and nonexertional limitations or restrictions, the rules pertaining to the strength limitations provide a framework to guide the disability determination **unless** there is a rule that directs a conclusion that the individual is disabled based upon strength limitations. 20 CFR 416.969a(d).

In this case, Petitioner was ■ years old at the time of hearing, and, thus, considered to be a younger individual (age ■) for purposes of Appendix 2. Petitioner has a bachelor's degree and a history of unskilled to skilled work experience. As discussed above, Petitioner is limited to no more than sedentary work activities. In regards to the Medical-Vocational Guidelines, Appendix 2, it does not result in a disability finding

based on Petitioner's exertional RFC. However, Petitioner has a reduction in his exertional and nonexertional capacity so that he is unable to perform substantially all of the occupations administratively noticed in Table 1 No. 1¹ due to his additional limitations or restrictions. See SSR 96-9p. As a result of Petitioner's additional exertional and non-exertional limitations, including, as discussed above, his moderate limitations in his mental capacity, he is unable to perform the full range of sedentary work. See SSR 96-9p. The Department has failed to present evidence of a significant number of jobs in the national and local economy that Petitioner has the vocational qualifications to perform in light of his exertional RFC and nonexertional RFC, age, education, and work experience. Therefore, the evidence is insufficient to establish that Petitioner is able to adjust to other work. Accordingly, Petitioner is found disabled at Step 5 for purposes of the SDA benefit program

DECISION AND ORDER


The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds Petitioner disabled for purposes of the SDA benefit program.

Accordingly, the Department's determination is **REVERSED**.

THE DEPARTMENT IS ORDERED TO INITIATE THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE THE ORDER WAS ISSUED:

1. Reregister and process Petitioner's [REDACTED], SDA application to determine if all the other non-medical criteria are satisfied and notify Petitioner of its determination;
2. Supplement Petitioner for lost benefits, if any, that Petitioner was entitled to receive if otherwise eligible and qualified; and
3. Review Petitioner's continued eligibility in [REDACTED].

EJF/jaf



Eric J. Feldman
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

¹ Table No. 1 of appendix 2, "Residual Functional Capacity: Maximum Sustained Work Capability Limited to Sedentary Work as a Result of Severe Medically Determinable Impairment(s)." See SSR 96-9p.

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

Authorized Hearing Rep.

[REDACTED]
[REDACTED]
[REDACTED]

MDHHS

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]